

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION

MDL No. 3047

Case Nos.: 4:22-md-03047-YGR-PHK

This Filing Relates to:

All Actions

**JOINT LETTER BRIEF ON
WHETHER YOUTUBE MUST
PRODUCE DOCUMENTS
REGARDING ITS CORPORATE
STRUCTURE AND HISTORICAL
VERSIONS OF POLICIES
CONCERNING ITS COMPLAINT
PROCESS**

Judge: Hon. Yvonne Gonzalez Rogers
Magistrate Judge: Hon. Peter H. Kang

Dear Judge Kang:

Pursuant to the Court's Standing Order for Discovery in Civil Cases, the PI/SD Plaintiffs ("Plaintiffs") and Defendants Google, LLC and YouTube, LLC ("YouTube") respectfully submit this letter brief regarding a dispute as to YouTube's amended responses to Request Nos. 62, 69, 71, 72, 76, and 79 in Plaintiffs' Request for Production Set 4.¹

Pursuant to that Discovery Standing Order and Civil Local Rule 37-1, the Parties attest that they repeatedly met and conferred by video conference before filing this brief. The final conferral was on October 29, 2024, and was attended by lead trial counsel for the Parties involved in the dispute. Lead trial counsel have concluded that no agreement or negotiated resolution can be reached.

This document is provisionally filed under seal, pursuant to the Order Granting Motion to File Under Seal: Setting Sealing Procedures. Dkt. 341.

Attached as **Exhibit A** is YouTube's Amended Responses and Objections to Plaintiffs' Request for Production Set 4.

Dated: November 5, 2024

Respectfully submitted,

/s/ Lexi J. Hazam

¹ Pursuant to the Court's standing order, the Parties have equally divided five single-spaced pages between YouTube and Plaintiffs to address their respective positions. See https://www.cand.uscourts.gov/wp-content/uploads/judges/kang-phk/PHK-Final-DiscoveryStanding-Order-v1.2-2023_06_01-1.pdf.

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ATTESTATION

I, Christopher Chiou, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1(i)(3), that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: November 5, 2024

By: /s/ Christopher Chiou

Christopher Chiou

PLAINTIFFS' POSITION

Plaintiffs move to compel production of responsive documents to RFP Nos. 62, 69, 71, 72, 76, and 79. These requests seek documents that are highly relevant to the central issues in this case. And YouTube's refusals are unreasonable: they either stand on either incomplete testimony and production in response to Plaintiffs' 30(b)(6) Notice or unsubstantiated claims of undue burden.

A. Requests Relevant to YouTube's Corporate Structure and Compensation Incentives

RFP Nos. 62 and 69 are relevant to Plaintiffs' claims that YouTube pursued its goal of maximizing engagement to drive profit despite its knowledge, and ever-increasing evidence, of the risk its products pose to young users. *See e.g.*, Dkt. 494 at ¶ 690 (social media products are about "maximizing revenue" by "maximizing engagement"); ¶ 773 (YouTube continues to manipulate users to enhance its bottom line despite evidence of harm); ¶ 16 (discussing 2021 U.S. Surgeon General advisory regarding dangers of social media); ¶¶ 96-124, 730 (describing nearly a decade of scientific and medical studies linking compulsive use of defendants' platforms to negative health outcomes); ¶¶ 372-379, 734, 768 (describing congressional investigations of social media platforms, including YouTube); ¶¶ 696-700 (describing how YouTube generates revenue by increasing engagement); ¶ 717 (YouTube continues to employ interrelated features to increase and maximize engagement); ¶¶ 724-726, 742, 745, 751-767, 770., 771 (citing more than fifteen media articles between 2012 and 2022 concerning YouTube's addictive algorithm, addictive features, tracking of its users, and/or YouTube's effects on youth mental health); ¶ 709 (describing 2019 settlement with FTC related to COPPA violations); ¶ 735 (alleging YouTube's recent hire of TikTok employees to launch YouTube Shorts – one of its most addictive features).

RFP No. 62 seeks documents concerning YouTube's "crisis management or crisis communication structure and organization" and policies for responding to "investigations, lawsuits, media inquiries, or government inquiries" concerning the safety of minor users. Information regarding *how* YouTube handles crises, investigations, lawsuits, and media and government inquiries, including *who* is involved, and the *methods* of communication, are highly relevant to Plaintiffs' ability to demonstrate knowledge of relevant risks at YouTube's highest levels and in Plaintiffs' selection of deponents. In the interest of compromise, Plaintiffs agreed to limit this request to documents "sufficient to show" such information. YouTube rejected Plaintiffs' proposal on the sole basis that YouTube previously provided 30(b)(6) testimony on overlapping topics. But YouTube's 30(b)(6) testimony did not, and was not intended to, cover YouTube's crisis communication structure (or organization) or YouTube's *policies* for responding thereto. For example, YouTube objected to, and the witness had little knowledge regarding, [REDACTED]. The Ninth Circuit has noted that information concerning *how* a defendant "typically responded" to safety concerns when they are raised *may* be "invaluable" to establishing knowledge and effectiveness of responses. *Dowling v. Am. Hawaii Cruises, Inc.*, 971 F.2d 423, 427 (9th Cir. 1992).

YouTube's unsubstantiated claims of burden do not provide a basis for its refusal to produce and do not excuse its failure to provide a code-compliant response specifying whether it is withholding documents and, if so, on what objections. Rule Nothing in the Rules permits a party to respond to a request for production by pointing to corporate deposition testimony. Plaintiffs are entitled to use multiple vehicles to conduct discovery. *See Tennison v. City & Cnty. of San Francisco*, 226 F.R.D. 615, 622 (N.D. Cal. 2005) (holding deposition testimony did not preclude production of documents, and noting that "documentary evidence is often necessary to assist in the examination of a witness"); *In re Sailed Tech. (Beijing) Co., Ltd.*, 2023 WL 3568151, at *8 (W.D. Wash. May 18, 2023) (deposition subpoena not improperly duplicative of RFPs, where objector failed "to explain why discovery through multiple mechanisms is unduly intrusive or burdensome"). YouTube's cases in support of the contrary are inapposite. *See Lilith Games (Shanghai) Co. v. uCool, Inc.*, 2015 WL 3523405, at *3 (N.D. Cal. June 4, 2015) (no *good cause* for *expedited* 30(b)(6) deposition); *Krause v. Hawaiian Airlines, Inc.*, 2019 WL 3731732, at *5 (E.D. Cal. Aug. 8, 2019) (denying motion to exceed standard limits interrogatories).

Request 69 seeks documents that “constitute, identify, or reflect” YouTube’s “policies, process, and criteria...to evaluate or determine compensation” for employees working in or with units with responsibility for issues related to youth safety. As Plaintiffs have explained, information regarding compensation, performance bonuses, and other incentives that rewarded (or failed to reward) accomplishments by individuals responsible for youth safety are relevant to the issue of whether YouTube prioritized user growth and engagement over safety. YouTube’s response to this request is that documents it produced in connection with Topic 7 of Plaintiffs 30(b)(6) deposition are “sufficient to show” its compensation policies for YouTube employees responsible for youth safety. But YouTube’s production – consisting of five documents concerning *generic* Google-wide compensation policies – is plainly *not* “sufficient to show” its policies as applied to youth safety. Moreover, YouTube provides *no basis* for limiting its response to documents “sufficient to show.” Contrary to YouTube’s assertions, this request seeks YouTube’s *policies* concerning compensation and *does not* seek information contained in personnel files. Recognizing compensation incentives as highly probative, courts permit the discovery of such information, where, as here, it is substantively tied to the alleged conduct at issues – *even* in sensitive personnel files. *See e.g., Abilify Prod. Liab. Litig.*, 2017 WL 4399198, at *11 (N.D. Fla. 2017) (“information concerning financial incentives sales representatives received ... is relevant and discoverable”); *Pradaxa Prod. Liab. Litig.*, No. 3:12-md-02385, ECF No. 166, at 5 (S.D. Ill. 2013) (compensation information “necessary to provide a complete picture regarding the subject employees’ incentives, motivation, and/or bias.”); *Testosterone Replacement Therapy Prod. Liab. Litig.*, No. 1:14-cv-01748, ECF No. 1027 (N.D. Ill. 2015) (compelling production of salary and other compensation information). Accordingly, compensation *policies* are plainly discoverable.

B. Request Related to YouTube’s Policies Concerning User Complaints

RFP Nos. 71, 72, 76, and 79 seek documents concerning YouTube’s policies for facilitating, documenting, processing, reporting, and retaining complaints related to the safety of youth users of its platform.² Discovery with respect to YouTube’s user complaint policies goes directly to Plaintiffs’ claims regarding YouTube’s knowledge of the risks posed by its platform, its promotion of abusive behavior towards children, and its inadequate reporting mechanisms for reporting harmful user conduct. *See e.g.,* Dkt. 494 at ¶ 791, 809, 811. It is also relevant to anticipated defenses, including representations that YouTube has “strict policies and robust operations in place to tackle content and behavior that is harmful or exploitative to children. *Id.* ¶ 785. YouTube refuses to produce final historical versions of *internal* policies as to each request, and to produce final historical versions of its *public* policies for RFP 72, 76, and 79.³

YouTube’s sole basis for withholding this relevant discovery is purported undue burden.

² RFP No. 71 seeks documents concerning policies for facilitation, documentation, review, analysis, discussion of, response, and address of complaints concerning the adverse effect of its platform on youth users; RFP No. 72 seeks documents concerning policies for intaking, processing, reviewing, investigating, and reporting to third parties, complaints involving youth users, and its consideration for such policies; RFP No. 76 seeks policies concerning the reporting of harassing and bullying conduct direct at youth users, including the mechanisms for reporting and consideration and response to such reports; and RFP No. 79 seeks policies concerning the retention of reports of violations of its terms of service, CSAM, sexual exploitation, predatory conduct, sex-trafficking, harassing, or bullying directed at youth.

³ In the *three months*, Plaintiffs attempted to engage with YouTube’s supposed offer to “meet and confer...to determine whether” YouTube would produce certain specific historical versions, YouTube failed to provide *any* information on the specific policies involved, their frequency of update, or the effort required for their production to enable a reasoned approach to identifying the versions to be produced. And while YouTube has agreed to produce historical versions *to the extent* they are located in its custodial collections, it has not confirmed they are likely to be included therein. Moreover, custodial collections are limited by short retention policies. ([REDACTED]).

But YouTube provides no evidence to show that the production of historical versions will be *unduly* burdensome in timeframe or substance. On timeframe, this Court has already held that the current default time period in this case is reasonable and proportional to the needs of the case. *See* Dkt. 953. On substance, after over *three months* of meet and confers, YouTube has failed to substantiate any claims of burden, relying instead on vague and conclusory statements that “collection of historical versions of some webpages, like support.google pages, requires employees to undertake a multi-step process for each webpage.” YouTube provides even *less* support for its refusal to produce historical *internal* policies, stating only that the burden is “even more pronounced” for internal policies. Thus, YouTube has not met its burden to “clarify[], explain[], and support[] its objections” that the requested discovery should not be allowed. *In re XF-TRW Airbag Control Units Prod. Liab. Litig.*, 2022 WL 19425956 at *3 (C.D. Cal. Jul. 25, 2022); *see also Debeaubien v. California*, 2021 WL 1616111, at *2 (E.D. Cal. Apr. 26, 2021) (obligation to provide sufficient detail on burden in terms of time, money and procedure required).

Even had YouTube properly supported its objection, the requests are proportional to the needs of the case, considering the relevance of the request, YouTube’s sole access to the evidence, and YouTube’s financial resources minimizing burden of compliance. *See* Fed. R. Civ. P. 26(b)(1) (proportionality considerations include importance of the issues, parties’ relative access to the information, and parties’ resources). Any difficulty associated with YouTube’s decision not to maintain historical versions in complete form is of its own making; a party’s choice to keep ESI in a manner that requires it to incur heavy expenditures to produce requested information does not provide a basis to withhold highly relevant materials. *See e.g., Micron Tech, Inc. v. Factory Mut. Ins. Co.*, 2022 WL 3083713, at *4 (N.D. Cal. Aug. 3, 2022) (“burdens that result[] from [company’s] own record-keeping practices cannot be used to shield it from discovery”); *Wagoner v. Lewis Gale Med. Ctr., LLC*, 2016 WL 3893135, at *3 (W.D. Va. July 14, 2016) (holding that a party’s decision to keep ESI in non-searchable format was irrelevant to proportionality calculus).

YOUTUBE'S POSITION

RFPs for Which YouTube Has Provided Extensive 30(b)(6) Testimony (RFP Nos. 62 and 69)

Plaintiffs are engaging in a fishing expedition into theoretical documents that would be duplicative of and less helpful than the documents, information, and testimony YouTube has already provided, to the extent additional documents even exist. YouTube has granted Plaintiffs extraordinary access to information regarding the intricacies of YouTube's corporate structure and compensation policies. And YouTube has agreed to produce compensation information for high-level employees who are deponents in this case. Plaintiffs' demand that YouTube search for still more documents should be denied. *See* Fed. R. Civ. P. 26(b)(2)(C) *et seq.* ("the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that . . . the discovery sought is unreasonably cumulative or duplicative").

RFP No. 62 seeks "All Documents concerning any crisis management or crisis communication structure, organization, or Policy considered or developed by You to respond to investigations, lawsuits, media inquiries, or government inquiries related to the Safety of Children, Teens, and Youth who use Your Platform, including the Persons involved in or responsible for such functions." Plaintiffs' only justification for this overbroad request is that these documents supposedly "demonstrate knowledge of relevant risks at YouTube's highest levels" and aid in Plaintiffs' selection of deponents.

YouTube has already provided 30(b)(6) testimony, produced documents, and served an interrogatory response that together provide Plaintiffs with the information sought by this request in the most reliable and comprehensive form in which it is available.⁴ Plaintiffs elicited over four hours of testimony regarding YouTube's corporate structure during YouTube's May 9, 2024 30(b)(6) deposition, including testimony regarding the structure of six different teams responsible for responding to lawsuits, government investigations and inquiries, and media inquiries—in other words, the teams directly responsible for related crisis management or communications—as well as testimony regarding the individuals within those teams and their roles.⁵ YouTube produced documents showing the structure of those relevant teams and subteams. And YouTube prepared and provided a detailed summary of the reporting lines for each of YouTube's custodians in response to Interrogatory No. 1. Moreover, Plaintiffs can readily ascertain the individuals involved in crisis management and communications from documents that YouTube has already produced reflecting the substance of that decision making, which are also the most complete sources of information regarding "knowledge of relevant risks." Plaintiffs' insistence that YouTube search for still more documents—which may not exist and which at a minimum would be less comprehensive and helpful than that already provided—amounts to a fishing expedition.

Plaintiffs have not articulated a theory of relevance that justifies the burden of searching for more documents reflecting the same information already provided. *See, e.g., Lilith Games (Shanghai) Co. v. uCool, Inc.*, No. 15-CV-01267-SC, 2015 WL 3523405, at *3 (N.D. Cal. June 4, 2015) (denying request for additional discovery because the targeted party would be "unduly burdened" and because the topic "can be addressed through already propounded interrogatories

⁴ Plaintiffs' citations to *Tennison*, 226 F.R.D. 615 (N.D. Cal. 2005) and *In re Sailed Tech. (Beijing) Co., Ltd.*, 2023 WL 3568151 (W.D. Wash. May 18, 2023) are inapposite. YouTube has **already produced** documents providing Plaintiffs with the information sought **in addition** to other forms of discovery.

⁵ Plaintiffs misconstrue the testimony of YouTube's 30(b)(6) witness regarding "[REDACTED]" and falsely state that the witness lacked knowledge. As the witness testified, [REDACTED]

[REDACTED] The witness testified knowledgeably about that term, how it is used, and why [REDACTED].

and requests for production”); *Krause v. Hawaiian Airlines, Inc.*, No. 2:18-CV-00928 JAM AC, 2019 WL 3731732, at *5 (E.D. Cal. Aug. 8, 2019) (denying plaintiff’s request for additional interrogatories because they are “unreasonably duplicative” of defendant’s expert report and Amended Response to a previous interrogatory).

Even if there were additional documents that were not duplicative, insofar as Plaintiffs seek policies on crisis management and the handling of investigations, lawsuits, or government inquiries, those policies are highly likely to be privileged documents to which Plaintiffs are not entitled regardless. Plaintiffs’ demand should be denied.

RFP No. 69 seeks “Documents that constitute, identify, or reflect the Policies, process, and criteria used by You during the Relevant Time Period to evaluate or determine compensation for employees working in or with Unit(s) responsible in whole or part for issues related to Safety, addiction, and/or problematic use by Youth, Teens, and Children.”

Plaintiffs assert that these documents go to whether YouTube prioritized user growth and engagement over safety. Plaintiffs have no explanation for how policies regarding compensation generally are relevant to the claims or defenses in this case. In any event, YouTube has *already produced* documents sufficient to show the policies and other information sought by this request in connection with YouTube’s May 9, 2024 30(b)(6) deposition on corporate structure. YouTube’s “generic” compensation policies *are* the compensation policies responsive to this request. YouTube has not produced compensation policies specific to youth safety because *no such policies exist*.

Plaintiffs nevertheless continue to insist that YouTube must produce *all* documents “reflecting” the policies, process, and criteria used to evaluate or determine compensation—a sweeping demand that would encompass not only materials duplicative of those already produced but also effectively include every document related to compensation or performance evaluation within the company, including sensitive and irrelevant personnel files.⁶ Plaintiffs’ demand should be denied.

Historical Internal Policies (RFP Nos. 71, 72, 76, and 79)

YouTube has agreed to search for and produce an array of policies relevant to the issues in this case, including historical versions of those policies to the extent they are located in YouTube’s custodial collections using the agreed upon search terms. But outside of custodial collections, as YouTube has repeatedly informed Plaintiffs, *such historical versions do not exist in complete form in the ordinary course of business*. Plaintiffs nevertheless demand that YouTube retrieve the individual fragments of historical versions of every responsive policy over the near-decade long relevant time period from non-custodial sources. Plaintiffs’ demand is unjustified and should be denied.

RFP Nos. 71, 72, 76, and 79 seek various categories of policies for facilitating, documenting, reviewing, analyzing, discussing, responding to, and addressing user complaints.⁷ In response, YouTube has agreed to produce current non-privileged final versions of responsive policies. YouTube has also agreed to produce non-privileged historical versions of those policies—both final and non-final—from the Relevant Time Period to the extent it locates them in its custodial

⁶ Plaintiffs seemingly recognize the sensitivity of documents of this nature, agreeing to exclude lower-level employees from their separate requests for compensation records in deposition notices.

⁷ RFP No. 71 seeks documents concerning policies for “facilitating, documenting, reviewing, analyzing, discussing, responding to, and addressing User Complaints.” RFP No. 72 seeks documents concerning policies for “intaking, processing, reviewing, investigating, and reporting to third parties” complaints involving the use of YouTube by minors. RFP No. 76 seeks policies concerning the reporting of harassing and bullying conduct directed at minors. RFP No. 79 seeks policies concerning the retention of reports of violations of YouTube’s terms of service, CSAM, sexual exploitation, predatory conduct, sex trafficking, harassing, or bullying directed at minors.

collections using the agreed-upon search terms. YouTube has also ***already produced historical versions*** of its Terms of Service and a variety of other policies relevant to this case, including YouTube’s: child safety policy; harassment and bullying policies; harmful or dangerous content policy; policy for reporting inappropriate videos, channels, and other content; suicide, self-harm, and eating disorders policy; and age-restricted content policy from the relevant time period. Yet Plaintiffs continue to demand that YouTube search for and produce ***all*** historical versions of ***all*** policies from non-custodial sources. The burden of producing such non-custodial historical versions is substantial: employees must undertake a time-consuming, manual, multi-step process to collect individual portions of each individual webpage (i.e., they cannot be retrieved on even a page-by-page basis).⁸ Plaintiffs’ demand that YouTube nevertheless retrieve still more portions of historical pages is unjustified given the significant burden YouTube has already undertaken in response to these requests and the irrelevance of those additional policies. For example, given the nature of YouTube’s business, policies related to user complaints can encompass a wide array of policies not relevant to the claims or defenses of this litigation, such as policies related to reports of terrorist content.

Although the burden of retrieving additional historical page pieces is unwarranted, in the interest of compromise, YouTube has offered to consider requests for any additional specific historical versions of policy pages where Plaintiffs believe those versions are necessary (and not already within YouTube’s production). But Plaintiffs have not been willing to engage in this process, instead maintaining their broad and untargeted demands for historical versions. Plaintiffs’ demands are “vastly disproportionate to the needs of the case,” particularly given YouTube’s existing production. *See Ramirez v. Bank of Am., N.A.*, No. 22-CV-00859-YGR (RMI), 2024 WL 388123 at *3-4 (N.D. Cal. Feb. 1, 2024), motion for relief from judgment denied, No. 4:22-CV-00859-YGR, 2024 WL 3550393 (N.D. Cal. Apr. 3, 2024) (denying plaintiffs’ motion to compel where defendants had already made productions responsive to the subject matter sought by the requests and the court agreed that document requests at issue were “vastly disproportionate to the needs of the case”). Plaintiffs’ demand should be denied.

⁸ Contrary to Plaintiffs’ assertion, YouTube has explained the burden of this process repeatedly, both in meet and confer and in correspondence.